



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

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2006 DEC 18 P 4: 06

**SENSITIVE**

Eric Kleinfeld, Esq.  
Ryan, Phillips, Utrecht & MacKinnon  
1133 Connecticut Avenue, N.W.  
Suite 300  
Washington, D.C. 20036

**DEC 18 2006**

RE: MUR 5542  
Texans for Truth

Dear Mr. Kleinfeld:

Based on a complaint filed with the Federal Election Commission, and information supplied by your client, Texans for Truth ("TFT"), the Commission, on February 17, 2005, found that there was reason to believe that TFT violated 2 U.S.C. §§ 433, 434, 441a(f) and 441b(a), and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that violations have occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

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Should you have any questions, please contact Mark Allen, the attorney assigned to this matter, or Cynthia E. Tompkins, Assistant General Counsel, at (202) 694-1650.

Sincerely,



Lawrence H. Norton  
General Counsel

Enclosure  
Brief

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1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2 In the Matter of )

Texans for Truth )

MUR 5542

3 **GENERAL COUNSEL'S BRIEF**

4 **I. INTRODUCTION**

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6  
7 This matter was generated by a complaint alleging that Texans for Truth ("TFT")  
8 violated the Federal Election Campaign Act of 1971, as amended, ("the Act") by failing  
9 to register as a political committee and to publicly disclose its contributions and  
10 expenditures through reports filed with the Commission despite having received more  
11 than \$1,000 in contributions or made more than \$1,000 in expenditures. After  
12 considering the complaint, TFT's response to the complaint, and publicly available  
13 information, the Commission opened an investigation to determine whether TFT violated  
14 2 U.S.C. §§ 433, 434, 441a(f), and 441b(a) by failing to register as a political committee  
15 with the Commission, by failing to report contributions and expenditures, by knowingly  
16 accepting contributions in excess of \$5,000, and by knowingly accepting corporate and  
17 union contributions. *See Factual and Legal Analysis for Texans for Truth (setting forth*  
18 *basis of reason to believe findings).*

19 The ensuing investigation confirmed and uncovered additional evidence that TFT  
20 accepted over \$1,000 in contributions for the purpose of defeating George Bush in the  
21 2004 presidential election. The investigation also confirmed that TFT satisfied the major  
22 purpose test. Based on the results of the investigation, which are set forth and analyzed  
23 below, the General Counsel is prepared to recommend that the Commission find probable  
24 cause to believe that TFT violated 2 U.S.C. §§ 433 and 434 by failing to register with the

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Commission as a political committee and report its contributions and expenditures, and that TFT violated 2 U.S.C. § 441a(f) by knowingly accepting contributions in excess of \$5,000.

## II. SUMMARY OF FACTS

TFT is an unincorporated entity organized under Section 527 of the Internal Revenue Code, and filed its Notice of 527 Status with the Internal Revenue Service on August 31, 2004. TFT has not registered as a political committee with the Commission. Glenn W. Smith founded TFT in response to attacks on John Kerry by Swift Boat Veterans for Truth ("SBVT"), whose multi-million dollar advertising campaign strongly questioned Mr. Kerry's character and fitness for the office of President as it criticized his military service in Vietnam.<sup>1</sup> Mr. Smith founded TFT "in hopes of correcting misperceptions on the Democratic presidential nominee advanced by the swift boaters and to tell simple truths about President George Bush's own military past. It seemed a necessary corrective."<sup>2</sup> From TFT's founding, during the time of the Republican National Convention which re-nominated President Bush, barely two months before the November 2004 election, TFT focused its activities and operated for those two months in what it described as "key swing states," where the presidential election was most competitive. Indeed, the sole statement on TFT's donations webpage regarding the use

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<sup>1</sup> SBVT was founded as a Section 527 organization in April 2004 by a group of military veterans who had served with John Kerry in the Vietnam War. By the time Glenn W. Smith founded TFT, SBVT had been airing its anti-Kerry television advertisements for weeks, beginning on August 5, 2004, just days after John Kerry was nominated at the Democratic National Convention on July 29 as the party's presidential candidate. By September 2, 2004, SBVT had spent over \$2 million on television advertisements in presidential election battleground states. These advertisements explicitly and repeatedly attacked John Kerry and challenged his fitness to serve as President of the United States.

<sup>2</sup> See <http://www.drivedemocracy.org/?m=200501&paged=3> (Glenn W. Smith statement posted on the DriveDemocracy website blog on January 5, 2005)

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1 of funds received by TFT pointed to an intention to influence the presidential election:  
2 “Your donation will help us put the Texans for Truth TV ad on the air in *key swing states*  
3 across the nation.”<sup>3</sup> [Emphasis added].

4 TFT’s initial solicitation a week after its formation explicitly attributed the attacks  
5 on John Kerry to President Bush rather than to SBVT.<sup>4</sup> This solicitation asked for funds  
6 in order to respond to attacks against John Kerry by President Bush, by the “Bush spin  
7 machine” and by President Bush’s “discredited henchmen.” The solicitation makes clear  
8 that the funds received would be used strategically to counter the attacks on Mr. Kerry by  
9 running advertisements “in key swing states” criticizing President Bush’s National Guard  
10 service. TFT’s initial television advertisement, which the solicitation describes in detail,  
11 alleged that President Bush evaded his National Guard service while in Alabama and  
12 asked him to identify the persons with whom he served.

13 TFT issued additional solicitations, which are described in detail below, which  
14 asked for funds to air a new advertisement criticizing President Bush in “key swing  
15 states” so that “American voters” could see it. Certain solicitations and TFT’s website  
16 also advertised a book, titled *Unfit Commander: Texans for Truth Take On George W*  
17 *Bush*.

<sup>3</sup> TFT’s website was discontinued in January 2005

<sup>4</sup> All of the solicitations on behalf of TFT were sent by email communication

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TFT is the Section 527 "arm" of DriveDemocracy, a non-profit Texas corporation formed on March 23, 2004, also by Glenn W. Smith, who serves as Executive Director of both organizations.<sup>5</sup>

TFT filed electioneering communication reports with the Commission on September 13, September 30 and October 21, 2004, in connection with its three television advertisements, disclosing a total of \$155,000 in donations received and \$303,000 in electioneering communications costs during the period from September 13 through October 20, 2004.<sup>6</sup> Overall, TFT reported to the IRS that it made approximately \$550,000 in total disbursements during September - December 2004. TFT made no disbursements in connection with other federal elections, in connection with state or local elections, or in connection with any public issue other than the presidential election or President Bush's Vietnam-era service record. Finally, TFT has been virtually inactive since the 2004 general election.

**III. TFT FAILED TO REGISTER AND REPORT AS A POLITICAL COMMITTEE**

The information shows that TFT should have registered with the Commission as a political committee, filed disclosure reports, and adhered to the Act's contribution limits. See 2 U.S.C. §§ 431(4)(A), 433, 434, and 441a. The Act defines a "political committee" as any committee, club, association, or other group of persons that receives

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<sup>5</sup> DriveDemocracy describes itself as "a Texas-based organization initially funded through a generous start-up grant from MoveOn.org. Like MoveOn, DriveDemocracy wants to help ordinary people make their voices heard in the political arena." Glenn W. Smith helped manage MoveOn's "Defending Democracy" campaign regarding the congressional redistricting in Texas. Defending Democracy's remaining proceeds served as MoveOn.org's grant to DriveDemocracy. See <http://drivedemocracy.org/about.php>

<sup>6</sup> The Act provides for the disclosure of donations of \$1,000 or greater for electioneering communications. See 2 U.S.C. § 434(f)(2)(E) and (F).

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1 “contributions” or makes “expenditures” for the purpose of influencing a federal election  
2 which aggregate in excess of \$1,000 during a calendar year. *See* 2 U.S.C. § 431(4)(A).  
3 For the purpose of triggering political committee status, the Act defines the terms  
4 “contributions” and “expenditures” as including “anything of value made by any person  
5 for the purpose of influencing any election for Federal office.” *See* 2 U.S.C.  
6 § 431(8)(A)(i), (9)(A)(i).

7 TFT exceeded the statutory threshold for political committee status by receiving  
8 “contributions” exceeding \$1,000 in response to fundraising solicitations clearly  
9 indicating that funds received would be used to help influence the defeat of a specific  
10 candidate in the 2004 presidential election. As a result of these contributions, TFT,  
11 which has the major purpose of engaging in federal campaign activity, violated the Act  
12 by failing to register and report as a political committee and by failing to comply with the  
13 Act’s contribution limits.

14 A. **TFT Exceeded the Statutory Threshold for Contributions When It**  
15 **Received Over \$1,000 in Response to Solicitations Clearly Indicating**  
16 **that Contributions Would Be Targeted to the Election or Defeat of a**  
17 **Clearly Identified Candidate for Federal Office**

18 Money received in response to fundraising solicitations clearly indicating that  
19 the funds being sought would be targeted to the election or defeat of specific federal  
20 candidates constitute contributions under the Act 2 U.S.C. § 431(8)(A); *FEC v*  
21 *Survival Education Fund, Inc* , 65 F.3d 285, 295 (2d Cir. 1995) (“*Survival Education*  
22 *Fund*”); *see also* Complaint, *FEC v Club for Growth, Inc* , No. 1:05-cv-01851-RMU  
23 (D.D C filed Sept 19, 2005). In *Survival Education Fund*, the court considered  
24 whether proceeds received in response to a fundraising solicitation mailed to the  
25 general public by two 501(c)(4) organizations during the 1984 presidential race

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1 constituted "contributions" under the Act. The cover letter to the solicitation included  
2 this language:

3 Funds are *urgently* needed to help defray the enormous cost of  
4 mounting, organizing, publicizing, and coordinating this  
5 nationwide effort. . . .

6 Your special election-year contribution will help us  
7 communicate your views to the hundreds of thousands of  
8 members of the voting public, letting them know why Ronald  
9 Reagan and his anti-people policies *must* be stopped. So,  
10 please, return your survey and your check *immediately*.  
11 Anything you can give at this time -- \$50, \$100, \$25[0], \$500,  
12 \$1,000, \$2,500 or more -- will help us reach more people, and  
13 increase the effectiveness of our election-year work.

14 *Survival Education Fund*, 65 F.3d at 288-89 [emphasis in original]. The Second Circuit  
15 considered whether the solicitation sought "contributions" and was subject to the Act's  
16 disclaimer requirements under 2 U.S.C. § 441d(a).

17 Stating that it was unnecessary to consider whether the mailer constituted express  
18 advocacy, the court analyzed whether the mailer solicited "contributions" based on  
19 *Buckley's* statement that contributions made to other organizations but earmarked for  
20 political purposes were contributions made "for the purpose of influencing elections"  
21 and, thus, were properly covered by the Act. *See id.* at 294 (*quoting Buckley v Valeo*,  
22 424 U.S. 1, 78 (1976)). In interpreting the phrase "earmarked for political purposes," the  
23 court stated:

24 The only contributions "earmarked for political purposes"  
25 with which the *Buckley* Court appears to have been  
26 concerned are those that will be converted to expenditures  
27 subject to regulation under FECA. Thus *Buckley's*  
28 definition of independent expenditures that are properly  
29 within the purview of FECA provides a limiting principle  
30 for the definition of contributions in § 431(8)(A)(i), as  
31 applied to groups acting independently of any candidate or  
32 its agent and which are not "political committees" under  
33 FECA. . . . Accordingly, disclosure is only required under

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§ 441d(a)(3) for solicitations of contributions that are earmarked for activities or “communications that expressly advocate the election or defeat of a clearly identified candidate” .... *Even if a communication does not itself constitute express advocacy, it may still fall within the reach of § 441d(a) if it contains solicitations clearly indicating that the contributions will be targeted to the election or defeat of a clearly identified candidate for federal office. . . . Only if the solicitation makes plain that the contributions will be used to advocate the defeat or success of a clearly identified candidate at the polls are they obliged to disclose that the solicitation was authorized by a candidate or his committee.*

*Id.* at 295 (*quoting Buckley*, 424 U.S. at 80) [emphasis added]. Based on this reasoning, the court held that the mailer solicited contributions within the meaning of section 441d, citing the mailer’s statement, “Your special election-year contribution will help us communicate your views to the hundreds of thousands of members of the *voting public*, letting them know why Ronald Reagan and his anti-people policies *must* be stopped.” *Id.* According to the court, this statement “leaves no doubt that the funds contributed would be used to advocate President Reagan’s defeat at the polls, not simply to criticize his policies during the election year.” *Id.*

Like the solicitation in *Survival Education Fund*, the language used in fundraising solicitations for TFT preceding the 2004 election clearly indicated that the funds received would be targeted to the defeat of a specific federal candidate. TFT’s initial solicitation makes clear that the funds received would be used to counter the attacks on Mr. Kerry by running advertisements “in key swing states” attacking President Bush’s National Guard service. TFT’s solicitation describes its first advertisement as featuring Robert Mintz, purportedly a member of the same Air National Guard unit as President Bush, who claimed in the ad that he never saw Mr. Bush; the solicitation then states that “[i]t is urgent that we place this ad this week in *key swing states*. We are asking you to join us

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1 by contributing to Texans for Truth here: [link]." [Glenn W. Smith 9/7/04 solicitation to  
2 DriveDemocracy members] [Emphasis added]. The solicitation links to TFT's donations  
3 page, which contained a single statement which repeated to prospective donors how their  
4 donations would be spent: "Your donation will help us put the Texans for Truth ad on  
5 the air in key swing states across the nation."<sup>7</sup>

6 Later TFT solicitations also indicated that the funds received would be targeted to  
7 the defeat of President Bush in the 2004 election. These solicitations, issued less than a  
8 month before the November election, asked potential donors for funds to air a new TFT  
9 advertisement so that "American voters" could hear "Stacy," the wife of a National  
10 Guardsman serving in Iraq, tell her "sincere, emotional account of Bush's hypocrisy and  
11 lack of integrity."<sup>8</sup> [Glenn W. Smith 10/8/04 and 10/9/04 solicitations]. These  
12 solicitations described advertisements that would criticize President Bush for "quit[ting]  
13 the National Guard early" and now "forbid[ding] Guardsmen in Iraq from leaving even  
14 after fulfilling their commitments." Here TFT is explicitly telling potential donors that  
15 their donations would be used to inform "American voters" of very negative  
16 characteristics of President Bush. The reference to "American voters" is entirely  
17 election-related, and the clear negative message indicates to potential donors that their  
18 donations would be used to defeat President Bush.

19 Days after that, TFT issued additional solicitations even more explicitly advising  
20 potential donors that their donations would be used to influence the election. This third  
21 round of solicitations specified that "Stacy" would be telling her story in "key swing

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<sup>7</sup> This page appeared at <http://texansfortruth.com/contribute.html>

<sup>8</sup> This advertisement, "Back Door Draft," aired in the states of New Mexico, Nevada and Arizona, from October 19 - 25, 2004

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states” thanks to donors’ support, and that TFT was raising money to double its advertisement buy so that “twice as many American voters” could hear Stacy’s “sincere, emotional account of Bush’s hypocrisy and lack of integrity.” [Glenn W. Smith 10/11/04 solicitations]. In referencing both “key swing states” and “American voters,” these solicitations tell potential donors not only of TFT’s intention to use their donations to influence the election by addressing its advertisements to voters, but also to exercise this influence strategically by addressing its advertisements to voters in swing states.<sup>9</sup>

TFT’s solicitations clearly indicate that the funds received will be used to defeat George W. Bush in the 2004 general election through an advertisement campaign to “American voters” in “key swing states.” These solicitations inform potential donors that the funds contributed would be used to advocate President Bush’s defeat at the polls, not simply to criticize President Bush’s policies. *See Survival Educ. Fund*, 65 F.3d at 295. Therefore, the proceeds from these solicitations would be contributions to TFT. As a result, all funds received in response to these solicitations, which were deposited into TFT’s account and used to pay for TFT’s advertisement campaign, constituted contributions received by TFT.

With these solicitations, TFT raised far more than the \$1,000 statutory threshold for political committee status. *See* 2 U.S.C. § 431(4)(A). Although the Commission sought information correlating the funds received to specific solicitations, TFT stated that its records do not enable it to determine the amount of funds received in response to specific solicitations. However, it is safe to conclude that based on TFT’s total receipts

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<sup>9</sup> Some of the statements in TFT’s solicitations may well have expressly advocated John Kerry’s election or President Bush’s defeat, but all the solicitations were sent by electronic mail, and so even if they contained express advocacy their cost was well below the \$1,000 in expenditures that may trigger political committee status under 2 U S C § 431(4)(A)

1 of over \$500,000, the funds received in response to the solicitations discussed above  
2 exceeded \$1,000.<sup>10</sup> Accordingly, based on contributions received, TFT was required to  
3 register as a political committee and commence filing disclosure reports with the  
4 Commission by no later than its receipt of contributions of more than \$1,000.

5 **B. TFT's Major Purpose Was Federal Campaign Activity**

6 The Supreme Court has held that "[t]o fulfill the purposes of the Act" and avoid  
7 "reach[ing] groups engaged purely in issue discussion," only organizations whose major  
8 purpose is campaign activity can be considered political committees under the Act. *See,*  
9 *e.g., Buckley*, 424 U.S. at 79; *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 262  
10 (1986) ("*MCFL*"). As described below, courts have identified two ways by which an  
11 organization may establish its "major purpose."

12 First, an organization's "major purpose" may be established through public  
13 statements of its purpose. *See, e.g., FEC v. Malenick*, 310 F. Supp. 2d 230, 234-36  
14 (D.D.C. 2004), *rev'd in part on other grounds, on reconsideration*, 2005 WL 588222  
15 (D.D.C. Mar. 7, 2005) (court found organization evidenced its "major purpose" through  
16 its own materials, which stated the organization's goal of supporting the election of  
17 Republican Party candidates for federal office, and through efforts to get prospective

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<sup>10</sup> The bulk of TFT's donations were received after the initial September 7, 2004 solicitation from Glenn W Smith discussed above and prior to the next solicitations in October 2004. According to a statement on DriveDemocracy's website dated September 12, 2004, two weeks after TFT was formed and just five days after the initial solicitations, TFT had raised \$400,000 from 6,300 individuals. *See* <http://www.drivedemocracy.org/?m=200409&paged=2>. On the same day as Mr. Smith's initial solicitation for TFT, Wes Boyd, co-founder, president and board member of MoveOn.org and treasurer of MoveOn.org Voter Fund, a Section 527 organization, solicited MoveOn.org members in Texas, and individuals who had signed a petition circulated via e-mail relating to the SBVT advertising campaign, on TFT's behalf. It is likely that most of the donations received by TFT were in response to Mr. Boyd's more widely distributed solicitation. However, it is highly unlikely that Mr. Smith's solicitation generated less than \$1,000 of the \$400,000 the two solicitations together reportedly generated in five days. Moreover, TFT received more than \$10,000 within a few days of the second and third TFT solicitations, which asked for money for the "Stacy" ad.

donors to consider supporting federal candidates); *FEC v. GOPAC, Inc.*, 917 F. Supp. 851, 859 (D.D.C. 1996) (“organization’s [major] purpose may be evidenced by its public statements of its purpose or by other means”); Advisory Opinion 2006-20 (Unity 08) (finding organization evidenced its major purpose through organizational statements of purpose on its website and to the Commission).

An organization can also satisfy the major purpose test through sufficient spending on campaign activity. *MCFL*, 479 U.S. at 262-264 (political committee status would be conferred on MCFL if its independent spending were to become so extensive that the group’s major purpose may be regarded as campaign activity); *see also Richey v. Tyson*, 120 F. Supp. 2d 1298, 1310, n.11 (S.D. Ala. 2002) (“As a threshold matter, the plaintiffs inaccurately describe the activity to which the major purpose inquiry relates. The plaintiffs describe the relevant major purpose as one to ‘expressly advocate’ a particular election result, while the Supreme Court has described the relevant major purpose (under FECA) as ‘the nomination or election of a candidate,’ or simply ‘campaign activity,’ terms that comfortably reach beyond explicit directions to vote a particular way.”) (internal citations omitted).

TFT’s activities and statements demonstrate that its major purpose was to defeat President Bush. In its entire existence, TFT has engaged in no activities (other than routine administrative activities and defending itself in this matter) that did not have to do with the presidential election. Its activities consisted of three television advertisements critical of President Bush’s military service; solicitations of funds in support of these ads, all of which mentioned either “voters” or “key swing states” that would be the target of TFT’s messages; a “Video Vote Vigil” in which “volunteer poll watchers armed with

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1 video cameras [were] to document voter intimidation efforts at polling places,”  
2 solicitations of funds in support of the Video Vote Vigil, two out of three of which  
3 identified “battleground states” that would be the target of the Vigil;<sup>11</sup> and promotion of a  
4 book, *Unfit Commander: Texans for Truth Take On George W. Bush*. TFT was not  
5 formed until the week of the Republican National Convention and engaged in no activity  
6 after the election. It never advocated a candidate in, or even commented on, any other  
7 2004 election, either federal or non-federal, and engaged in no advocacy, advertising,  
8 lobbying or any other activity that did not directly relate to the 2004 presidential election.  
9 And the vast bulk of TFT’s activity related in some way to President Bush’s service  
10 record.<sup>12</sup> Even those portions of its advertisements that criticized the conduct of the war  
11 in Iraq did so by contrasting the service of current military personnel serving in Iraq with  
12 Bush’s Vietnam-era service in the Air National Guard.<sup>13</sup>

13 Today under President Bush’s order National Guardsmen are fighting and  
14 dying in Iraq. Serving their country with courage and honor. George  
15 Bush walked away from his duty to the nation and to the National Guard.  
16 His father got him into the Guard and out of the Guard. Mr. President you  
17 owe our troops an explanation. You pledged to release all of your military

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<sup>11</sup> The third such solicitation includes the statement that “[t]hroughout the nation, in election after election, Republicans rely upon voter intimidation and suppression strategies ”

<sup>12</sup> Although TFT’s Video Vote Vigil did not directly address President Bush’s military record, by any measure, VVV comprised a small part of TFT’s overall activity. TFT’s solicitations in support of VVV were issued starting on October 25, 2004, only a few days before the election, and TFT disclosed to the IRS the receipt of only \$3,995 in itemized donations during the period October 25, 2004 through November 22, 2004, comprising a mere 1.8% of the overall \$225,695 in the overall itemized donations TFT disclosed

<sup>13</sup> TFT’s other advertisement, described above, featured Robert Mintz, purportedly a member of the same Air National Guard unit as President Bush. Here is the audio of that advertisement

I heard George Bush get up and say, I served in the 187th National Guard in Montgomery, Alabama. Really, yes, that was my unit and I don’t remember seeing you there. So, I called friends, did you know George served in our unit? No, I never saw him there. It would be impossible to be unseen in a unit of that size.

[“AWOL” television advertisement]

records but you have not signed the papers to do so. Sign them now.  
Keep your word. Choose honor.

["Honor" television advertisement].

My husband and I love our country. For him being in the National Guard always has been about duty and honor and commitment. President Bush did not complete his service to the National Guard and now he is turning around and making that same Guard stay overseas in Iraq after they finished their commitment to this country? The fundamental issue is integrity. People are literally dying for the lack of integrity.

["Back Door Draft" television advertisement]. Glenn W. Smith admitted under oath that the advertisements were intended to influence the election:

Well, it is pretty obvious that this came in advance of an election, so I wanted this awareness there so that as people began to make their considerations of who to vote for, this might play a part in that....

Transcript of Deposition of Glenn W. Smith at 78:16-20.

Indeed, not only was TFT set up explicitly to counter the message of Swift Boat Veterans for Truth, but some of its specific messages appeared to mimic similar messages by SBVT. TFT's initial advertisement, which featured a retired military officer who states that he never saw George W. Bush in their Alabama National Guard unit, parallels the first SBVT advertisement, which featured several Vietnam War veterans who served with John Kerry. In fact, on September 7, 2004, the day of the initial TFT solicitation, an SBVT political consultant advised several colleagues by e-mail to review TFT's "anti-[B]ush ad." The consultant described TFT's advertisement as "[l]ook[ing] like a lift from Swift Boaters" and stated that "We should get this out as the reason we need to be on the air - everywhere." [Brian McCabe 9/7/04 e-mail].

Finally, although TFT's registration with the IRS stated that its purpose is voter education and promoting interest in issues and participation in elections, TFT's own

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1 website described the organization much more narrowly, in terms of its belief that “time  
2 has come for America to learn the truth about” the “shadowy past” of a single candidate,  
3 George W. Bush,<sup>14</sup> whose status as a candidate is emphasized by the timing of TFT’s  
4 activity solely in the two months before the 2004 election. TFT’s actual activities  
5 manifest this narrow, election-related focus, such as solicitations that told prospective  
6 donors that with their funds television ads – aimed solely at criticizing President Bush –  
7 would be shown to “voters” and/or in “key swing states.” Glenn W. Smith stated after  
8 the 2004 election that he founded TFT “in hopes of correcting misperceptions on the  
9 Democratic presidential nominee advanced by the swift boaters and to tell simple truths  
10 about President George Bush’s own military past.” Accordingly, notwithstanding TFT’s  
11 generic statement of purpose, the activities and post-election statements indicate that  
12 TFT’s major, and indeed only purpose, was to influence the presidential election.

13 Thus, TFT satisfies *Buckley*’s major purpose test.

14 C. **TFT Triggered Political Committee Status and had a Duty to Disclose**  
15 **its Receipts and Disbursements and to Comply with the Act’s**  
16 **Contribution Limits and Source Prohibitions**

17 Based upon the foregoing, TFT, which had the major purpose of federal campaign  
18 activity, exceeded the \$1,000 threshold for political committee status set forth in 2 U.S.C.  
19 § 431(4) by receiving over \$1,000 in contributions in response to fundraising solicitations  
20 clearly indicating that the funds received would be targeted to the election or defeat of a  
21 clearly identified federal candidate. As a result, TFT had a duty to register as a political  
22 committee with the Commission and disclose its receipts and disbursements to the public  
23 through reports filed with the Commission. See 2 U.S.C. §§ 433 and 434. Accordingly,  
24 the General Counsel is prepared to recommend that the Commission find probable cause

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<sup>14</sup> The quoted statement was formerly posted at <http://texansfortruth.com/about.html>



to believe that Texans for Truth violated 2 U.S.C. §§ 433 and 434 by failing to register and report as a federal political committee.

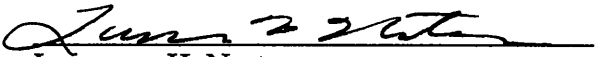
**IV. TFT ACCEPTED EXCESSIVE CONTRIBUTIONS**

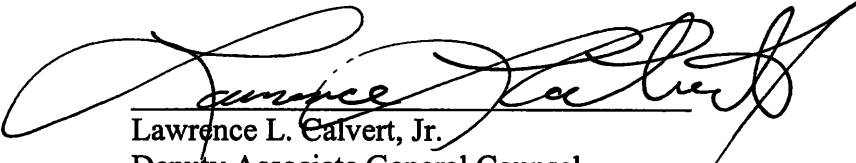
As a political committee, TFT must comply with the Act's contribution limits and source restrictions. TFT knowingly accepted contributions in amounts exceeding \$5,000 from individuals.<sup>15</sup> Accordingly, the General Counsel is prepared to recommend that the Commission find probable cause to believe that Texans for Truth violated 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions.<sup>16</sup>

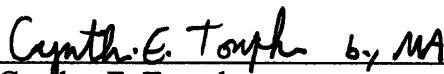
**V. GENERAL COUNSEL'S RECOMMENDATIONS**

1. Find probable cause to believe that Texans for Truth violated 2 U.S.C. §§ 433 and 434 by failing to register with the Commission as a political committee and report its contributions and expenditures.
2. Find probable cause to believe that Texans for Truth violated 2 U.S.C. § 441a(f) by knowingly accepting contributions in excess of \$5,000.

Date

  
Lawrence H. Norton  
General Counsel

  
Lawrence L. Calvert, Jr.  
Deputy Associate General Counsel  
for Enforcement

  
Cynthia E. Tompkins  
Assistant General Counsel

<sup>15</sup> TFT disclosed receiving three contributions in excess of the \$5,000 limit \$100,000 from one individual, \$10,000 from a single-member limited liability company whose activity was later folded into the member's individual federal tax return, and \$6,000 from a third individual

<sup>16</sup> TFT does not appear to have accepted corporate or union funds

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*Mark Allen*

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Mark Allen  
Attorney

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